

SECTION V. CIVIL RIGHTS

OVERVIEW

The following is an outline of the CDBG civil rights responsibilities. It identifies the **two basic types of requirements**, the extent of the applicability of the nondiscrimination requirements, and the specific areas in which affirmative actions are required.

I. NONDISCRIMINATION/EQUAL OPPORTUNITY REQUIREMENTS

Discrimination prohibited on basis of:

- race
- national origin
- religion
- color
- sex
- age
- handicap

Discrimination prohibited in:

- project benefits
- employment/training
- contracting/business opportunities

Under the nondiscrimination and equal opportunity requirements, the CDBG grantee must ensure that no person or group is denied project benefits or employment, training, business, contracting or housing opportunities on the basis of race, national origin, religion, color, sex, age, or handicap.

According to 24 CFR Part 8, Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities, an "Individual with handicaps" is defined as any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. For purposes of employment, this term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from performing the duties of the job in question or whose employment, by reason of current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; or any individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

Regardless of the type of project selected to be undertaken under the CDBG program, the grantee must monitor, as the project progresses, the extent to which protected groups within the community are, in fact, participating in and receiving benefits from the CDBG project.

NOTE: At a minimum and regardless of the type of project being undertaken, the grantee should take those actions necessary to ensure that members of protected groups have equal access to any information related to benefits and employment, training, business, contracting and housing opportunities resulting from the CDBG project.

A. SECTION 504 REQUIREMENTS

Section 504 applies to all applicants for, and recipients of HUD assistance in the operation of programs or activities receiving such assistance.

SECTION 504 of the 1973 Rehabilitation Act (Amended 1978, 1986), states that no otherwise qualified individual with handicaps in the United States shall, solely because of his/her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Refer to the **EXHIBITS V-B and V-C** at the end of this section for sample notice and self-evaluation forms.

1. GENERAL REQUIREMENTS OF SECTION 504

- a. **Communications** - Must ensure effective communication with persons with all types of disabilities in all activities. Where a grantee communicates with applicants and beneficiaries by phone, a Telecommunication Device for the Deaf (TDD) is required. Grantees must adopt procedures to ensure that interested persons can obtain information on all of the programs in an accessible format.
- b. **Employment** - Employment practices including hiring, testing, physicals, and recruitment are all subject to Section 504. Employers must make reasonable accommodations for the needs of handicap employees.
- c. **Self-evaluation plan** - Completion of this is required of all grantees. To complete the self-evaluation process the grantee must:
 - **Review** an inventory of programs and activities conducted by the grantee.
 - **Collect and document** the policies and practices that govern the administration of the grantee's programs and activities.
 - **Analyze** how the grantee's policies and practices affect individuals with handicaps who seek to participate in their programs and activities.
 - **Make and document changes and additions** to agency policy to remedy any discrimination found.
 - **Obtain comments** on the draft self-evaluation from individuals with handicaps and other interested persons.

Periodically, the self-evaluation should be reviewed and updated to ensure that new policies are not causing discrimination and that individuals with handicaps continue to be able to participate fully in the grantee's program. This self-evaluation must be kept on file and made available for public inspection for a period of 3 years and include names of interested parties contacted.

- d. **Transition plan** - If physical changes need to be made to achieve accessibility for persons with disabilities, a transition plan must be developed. The plan must be developed with the assistance of individuals with handicaps or organizations representing them. A copy of the plan must be made available for public inspection. Contents of the plan are:
 - **identification of the physical obstacles** that limit accessibility
 - **detailed description of methods that will be used** to make facilities accessible
 - **schedule** for each step of the process
 - **name of official responsible** for implementation of the plan
 - **names of persons or groups who assisted** with the plan

2. SECTION 504 REQUIREMENTS FOR GRANTEEES WITH 15 OR MORE EMPLOYEES (Full or Part-time)

- a. Designation of at least one person to coordinate grantee's Section 504 responsibilities.
- b. Adoption of grievance procedures that incorporate due process standards and allow for quick and prompt resolution of any complaints of alleged discrimination based on disability.
- c. Notification to all participants, employees, unions and professional organizations that grantee does not discriminate on the basis of disability.
 - Notice must identify individual designated to coordinate grievance procedures.
 - Notification process must be ongoing and can include processes such as the posting of notices, statements in printed media, and inclusion in other written materials. The notification process must ensure that all individuals, including those with visual and hearing impairments, are aware of the nondiscrimination pledge.

FOR HOUSING ONLY

For housing projects which include any new construction or substantial rehabilitation of multi-family housing units, **Section 504 requires** that at least 5% of those units (or at least one, whichever is greater), be made handicap accessible or adaptable according to the Uniform Federal Accessibility Standards (UFAS). Two percent (2%) of the units in such a project shall be accessible for persons with hearing or vision impairments. To the maximum extent feasible, these units are to be evenly distributed throughout the project site and be of sufficient range of size when compared to other units. The owner or manager of the housing units must make available information regarding the availability of handicap accessible units to eligible individuals.

In rare instances, a waiver of the 5% handicap accessibility requirement can be requested from HUD if it can be proven that it is not economically feasible when compared to the total cost of the project.

NOTE: Contact your Division of Housing Developers for additional information on handicap accessibility requirements under Colorado Statute. Developer names and addresses are included in the Technical Assistance section of this guidebook.

II. AFFIRMATIVE ACTION

- A. FAIR HOUSING - ALL CDBG grantees regardless of the type of project**, are required to and must **certify that they will "affirmatively further fair housing" at the time of application**. This requirement is in addition to the requirement to conduct projects in conformity with Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Title VIII of the Civil Rights Act of 1968 (Public Law 90- 284, popularly known as the Fair Housing Act). This means that grantees are not only prohibited from discriminating with respect to employment, program benefits and housing, but are also required to take "affirmative action" to promote fair housing for minorities and women in their communities.

Documentation of **ALL** actions taken by grantee must be kept and reported in the Project Completion Report (**PCR**) at the time of close-out (See Chapter IX, Project Close-Out). **Merely posting fair housing posters in many cases is not considered substantive.**

The following are some suggested actions that grantees may want to consider as ways to promote fair housing in their communities and thereby comply with the certification/requirement to take affirmative action in this regard. Prior to trying to decide what actions to take, grantees are encouraged to identify the problems that minorities and women are having in securing housing of their choice in locations of their choice in the community.

- Post "equal housing opportunity" posters and/or decals in conspicuous places. (In the case of a housing rehabilitation program, these posters/decals should be placed at the location(s) where applications for assistance are received.)
- Include information about fair housing in materials used to familiarize the community with local CDBG program services.
- Include statements of fair housing policies in local CDBG program goals, objectives and administrative procedures.
- Use "equal housing opportunity" slogan and logo on official letterhead and in all printed materials related to the local CDBG program.
- Publish a summary of the provisions of Title VIII of the Civil Rights Act of 1968 (the "Fair Housing Act") in local newspapers.
- Sponsor fair housing seminars and campaigns. The State Civil Rights Division (303-894-2997) can provide experienced trainers, as well as slide and video tape presentations, for local or regional fair housing workshops.

- Work with local real estate brokers to end any identified discriminatory practices and to post "equal housing opportunity" notices or decals.
- Work with local lending institutions to end identified "redlining" practices and to post "equal lending opportunity" notices.
- Work with minority and women leaders in the community to promote housing development and increase minority and female participation.
- Assist local Housing Authorities, builders, developers and property owners in developing outreach programs to attract minorities and females.
- Create and/or provide financial support for a local Housing Authority.
- Conduct special studies to ensure that minority and female housing needs are adequately identified.
- Review zoning ordinances and comprehensive plans to ensure that they promote spatial de-concentration of assisted housing units.
- Make local government-owned property outside of areas of concentration available for the construction of assisted housing, particularly for large families.
- Designate a fair housing coordinator and publicize that the local government will assist persons experiencing discrimination in housing. Such assistance can be in the form of facilitating the filing of a complaint with the State Civil Rights Commission/Division or the State Real Estate Commission.
- Provide housing counseling services which assist minorities and women seeking housing outside areas of concentration.
- Develop and adopt a Fair Housing Ordinance with identification of methods of enforcement
- Support fair share housing allocation plans.
- Adopt a code enforcement ordinance that compels landlords to keep their housing in safe and sanitary condition.
- If fair housing programs or services were previously instituted and are still available, publicize that these programs or services are available.

B. AFFIRMATIVE ACTION -- Employment, Training, Contracting, and Business Opportunities

1. SECTION 3: LOCAL EMPLOYMENT, TRAINING AND CONTRACTING

Section 3 of the Housing and Urban Development Act of 1968 requires, to the greatest extent feasible, that: 1) opportunities for training and employment be given to lower income residents of the project area; and 2) contracts for work in connection with the project be awarded to businesses which are located in, or owned in substantial part by persons residing in the project area. ("Project area" means the unit of local government or the metropolitan area or non-metropolitan county.)

This means that ALL PROJECTS using CDBG funds should perform certain actions which include :

- notifying Section 3 residents and contractors about training, employment and contracting opportunities,
- including the Section 3 clause in all solicitations and contracts,(See Section VIII Exhibit J, Page VIII-J-17, #56, Section 3 Clause)

- taking affirmative actions which will facilitate the training and employment of Section 3 residents and award compliance of contractors and subcontractors and refrain from entering into any contract with a contractor known to have violated the requirements of Section 3, obtaining compliance of contractors and refraining from entering into any contract with a contractor known to have violated the requirements of Section 3,
- documenting the actions taken to implement Section 3 requirements, the results of such actions and the impediments to implementing Section 3,
- reporting these actions annually to the Department of Local Affairs as long as the project remains open **IF** the project is considered a "Section 3 project" as described below.

2. **SECTION 3 PROJECT**

For projects containing construction, conversion or rehabilitation of housing or other public construction in which the total project costs exceed \$200,000, a Section 3 report must be prepared and submitted annually as long as the project remains open. The reporting format and definitions used for Section 3 are contained in **Exhibit V-E**.

FOR ECONOMIC DEVELOPMENT PROJECTS ONLY

For Economic Development projects, contact OED for additional instructions.

If the grantee has received an ED infrastructure grant or the assisted business is constructing a private facility and meets the \$200,000 threshold discussed above, the grantee should be aware that the assisted business(es) must also comply with the new Section 3 requirements, specifically in regards to hiring low or very low income persons to construct the businesses private facilities.

If a grantee is subject to Section 3 reporting regulations and **subcontracts funds in excess of \$100,000** to any one contractor, then that contractor is also responsible for compliance with Section 3 reporting regulations and their report should be included in the grantee's report. If no subcontract exceeds \$100,000, the Section 3 requirements apply only to the grantee.

The Section 3 report must be submitted to the DOLA at the time of project close-out along with the Project Completion Report (PCR).

For grantees whose total project does not meet the \$200,000 threshold, no report is needed, however, actions taken pertaining to Section 3 should be documented and will be monitored at the time of project close-out and no report has to be submitted.

All data is to be submitted in the aggregate to reflect how many and what percentage of new hires were Section 3 residents for employment opportunities

A community should be aware that Section 3 applies to its own employees as well.

Thus, if a grantee needs to fill any positions (whether public works employees or administrative staff) as a result of a Section 3 covered project, it must follow Section 3 guidelines and regulations.

Regardless of the amount of CDBG funds used in a project, the state encourages all grantees where possible and appropriate to hire locally for activities related to the CDBG project.

IF SUBJECT TO SECTION 3 REQUIREMENTS, THE SECTION 3 CLAUSE MUST BE INCLUDED IN ALL CONTRACTS AND MUST BE DISCUSSED AT THE PRE-CONSTRUCTION CONFERENCE AND THE PRE-BIDDERS CONFERENCE, IF SUCH IS HELD. Refer to SECTION VIII, LABOR & CONSTRUCTION FOR FURTHER INFORMATION.

PLEASE CONTACT YOUR PROJECT MONITOR TO DETERMINE WHETHER YOUR PROJECT IS SUBJECT TO SECTION 3 REQUIREMENTS.

3. EXECUTIVE ORDER 11246: EQUAL EMPLOYMENT OPPORTUNITY

Another requirement briefly described above is Federal Executive Order 11246. This requirement provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin during the performance of federal or federally-assisted **CONSTRUCTION CONTRACTS**. As specified in the Executive Order and the implementing regulations, **contractors and subcontractors are required to take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation**; and selection for training, including apprenticeship. Grantees are required to include in all construction contracts exceeding \$10,000 a so-called "Equal Opportunity Clause." (This clause is contained in a sample contract in the Labor and Construction of this Guide, **EXHIBIT VIII-J**. This clause requires contractors and subcontractors to take specific affirmative actions including: 1) posting in a conspicuous place available to employees and applicants for employment the "Equal Employment Opportunity" (EEO) poster; 2) stating in all solicitations or advertisements for employees that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin; 3) sending to each labor union or representative of workers with which there is a collective bargaining agreement a copy of the EEO poster for posting in conspicuous places available to employees and applicants for employment; and 4) placing the "Equal Opportunity Clause" in all subcontracts for any project work which exceeds \$10,000.

4. MINORITY BUSINESS ENTERPRISES (MBEs) AND WOMEN BUSINESS ENTERPRISES (WBEs)

The State encourages CDBG grantees to work with the State Minority Business Office or Women's Business Office to provide opportunities for participation by minority and women owned businesses in CDBG assisted projects. Grantees can do this by providing the Minority and Women's Business Offices with notices related to RFPs, bid announcements and the names of contractors awarded contracts. Grantees can also call the Minority and Women's Business Offices to obtain the names of minority contractors in their areas who can be invited to bid on project work. The address and phone number are:

Minority Business Office/Women's Business Office
Office of Economic Development
1625 Broadway, Suite 1710
Denver, CO 80202
Telephone: (303) 892-3840

As used in the contract, the term "minority or woman business enterprise" means a business, at least 51 percent of which is owned by women or minority group members or, in the case of publicly-owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are reported in the following categories: Blacks, Hispanics, Asians/Pacific Islanders and American Indians/Alaskan Natives.

Grantees may rely on written representations by bidders, contractors, and subcontractors regarding their status as women or minority business enterprises and need not conduct an independent investigation. HUD strongly encourages the use of MBEs and Women Business Enterprises (WBEs) for construction and non-construction contracts and when procuring other goods (e.g., office supplies) and services (e.g., banking services).

The following are some suggested actions or means through which communities may be able to increase the participation of MBEs and WBEs in their local CDBG programs:

Identify local MBEs and WBEs from existing directories and lists, including the following:

- Minority Business and Professional Directory (primarily for the Denver, Colorado Springs and Pueblo areas; published by the Minority Business and Professional Directory, P.O. Box 22747, Denver, Colorado 80222; 303-892-3840)

- Certified/Pre-Qualified Contractor Listing (published by the EEO Administrator, Colorado Department of Highways, 4201 E. Arkansas Avenue, Denver, Colorado 80222; 303-757-9234)
- Approved 8(a) Contractor List-Colorado (published by the Small Business Administration, Denver District Office, 999 18th Street, Denver, Colorado 80202; 303-294-7186)

Identify local MBEs and WBEs through local minority and women groups, business and professional organizations, local government purchasing departments, etc.

Individually notify MBEs and WBEs of business opportunities resulting from or associated with the CDBG program.

Disseminate information on business opportunities for MBEs and WBEs through announcements in the local media and through local minority, women, business, professional and trade groups.

Conduct meetings for MBEs and WBEs to inform them of CDBG and other business opportunities and to explore ways to overcome impediments to their participation.

Specifically mention MBEs and WBEs in invitations for bids.

Breakdown contracts into smaller components, where feasible, to make it easier for MBEs, and WBEs and other small contractors to bid on CDBG project work.

Develop a payment schedule so as to minimize cash flow problems for MBEs, WBEs and other small contractors.

Work closely with local financial institutions and bonding and insurance companies to alleviate financial barriers for MBEs, WBEs and other small contractors.

Use the least complicated bid form appropriate for each procurement/solicitation.

Provide prime contractors with a list of qualified local MBEs and WBEs.

Review bids with unsuccessful bidders, including MBEs and WBEs, so they understand why they were unsuccessful.

Develop an assistance guide which details the programs and activities available to assist MBEs and WBEs.

Designate an MBE/WBE Coordinator to facilitate MBE and WBE participation in CDBG and other business opportunities.

Provide managerial and technical assistance to small businesses, including MBEs and WBEs.

Provide direct financial assistance (through, for example, CDBG- capitalize revolving funds) to small businesses, including MBEs and WBEs.

Draft an MBE/WBE plan which identifies actions to be taken to increase MBE and WBE participation and which may establish participation goals.

C. AFFIRMATIVE ACTION -- Remediating and Overcoming the Effects of Past Discrimination

The purpose of an affirmative action is to remedy and overcome the effects of past discrimination. Affirmative actions (presented in an affirmative action plan) **MUST BE TAKEN ANY TIME THERE HAS BEEN A FORMAL FINDING OF DISCRIMINATION AGAINST THE LOCALITY** as a result of a "Compliance Review" conducted by the HUD Regional Office of Fair Housing and Equal Opportunity (HUD/FHEO) as part of its continuing responsibilities or as the result of any discrimination complaint investigation carried out by HUD/FHEO. The plan must identify the effects of the past discrimination and specify those actions the locality will take in order to overcome the identified impacts.

1. LOCAL GRANTEE MONITORING OF SUBRECIPIENTS AND CONTRACTORS

When local governments contract with private or public entities for either administration of the CDBG program or for actual project work (e.g. construction of a public facility), **the local government must provide the subrecipient or contractor** with all applicable equal opportunity and affirmative action information and requirements, and **must monitor** the contracts to ensure that all required actions are taken.

2. HUD REVIEWS AND INVESTIGATIONS OF LOCAL GRANTEES

While the state staff is responsible for monitoring civil rights and fair housing compliance by grantees, the Secretary of HUD retains the responsibility for conducting periodic "Compliance Reviews" of State CDBG grantees and remains the designated authority for the investigation and resolution of specific complaints of discrimination or noncompliance.

The HUD Regional Office of Fair Housing and Equal Opportunity (HUD/FHEO) is expected to conduct Compliance Reviews of approximately ten percent of the State's CDBG grantees. These Compliance Reviews involve detailed analyses of the grantee's civil rights performance and often require extensive preparations on the part of the grantee. HUD/FHEO makes arrangements directly with the selected grantees for these Reviews. The State staff is notified and invited to observe.

A complaint may be filed with HUD/FHEO by any person or class of persons within 180 days of the alleged discriminatory action. (In the case of an alleged Section 3 violation, the complaint must be filed within 90 days.) After contact with the complainant to clarify the issues, the regional HUD/FHEO investigator will contact the grantee concerning the complaint and schedule a review visit. Based on interviews and information gathered during the review, the investigator will prepare a report and analysis of the complaint. If there is no finding of a Title VI violation, regional HUD/FHEO will provide notice to the grantee and the complainant of no finding. No further action by the grantee is required.

If there is a finding of noncompliance, regional HUD/FHEO will inform the grantee of the finding and may first seek an informal and/or voluntary resolution of the complaint. This is accomplished through a "Voluntary Compliance Plan" by which the grantee will resolve the impact of the discriminatory action. The Plan must be approved by regional HUD/FHEO.

If an informal solution cannot be reached, regional HUD/FHEO sends the review report and all supporting documentation related to the case to central office HUD/FHEO (in Washington, D.C.) for the beginning of formal enforcement procedures. These procedures can result in the termination of federal assistance to the grantee and deferral of any future assistance until the finding is resolved.

NOTE: HUD has indicated that every effort will be made to reach informal solutions to noncompliance findings. Upon receipt of a complaint, regional HUD/FHEO will contact the state to assist in seeking an informal solution to the complaint, if required.

3. RECORDKEEPING REQUIREMENTS

HUD now requires that grantees/subgrantees keep a record of all applicants for as well as beneficiaries of any project assisted in whole or in part with CDBG funds for direct benefit activities such as revolving loans to business or housing rehabilitation projects. **HUD ASKS THAT THESE RECORDS BE KEPT BY RACE, ETHNICITY, DISABILITY STATUS, AND GENDER OF HEADS OF HOUSEHOLDS FOR BOTH APPLICANTS AND BENEFICIARIES. (Providing this information is optional on the part of the applicant/beneficiary)**

Other required Civil Rights recordkeeping requirements are listed in **EXHIBIT V-A**. A sample application log is contained in **EXHIBIT V-D**.